

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FILED/ACCEPTED

AUG 27 2017

Federal Communications Commission  
Office of the Secretary

In the Matter of )

MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC )

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 001358779

Participant in Auction No. 61 and Licensee of Various )  
Authorizations in the Wireless Radio Services )

Applicant for Modification of Various Authorizations in )  
the Wireless Radio Services )

Applicant with ENCANA OIL AND GAS (USA), )  
INC.; DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY RURAL )  
MEMBERSHIP ELECTRIC COOPERATIVE; )  
PUGET SOUND ENERGY, INC.; ENBRIDGE )  
ENERGY COMPANY, INC.; INTERSTATE )  
POWER AND LIGHT COMPANY; WISCONSIN )  
POWER AND LIGHT COMPANY; DIXIE )  
ELECTRIC MEMBERSHIP CORPORATION, )  
INC.; ATLAS PIPELINE-MID CONTINENT, )  
LLC; DENTON COUNTY ELECTRIC )  
COOPERATIVE, INC., DBA COSERV )  
ELECTRIC; AND SOUTHERN CALIFORNIA )  
REGIONAL RAIL AUTHORITY )

Application File Nos. 0004030479,  
0004144435, 0004193028,  
0004193328, 0004354053,  
0004309872, 0004310060,  
0004314903, 0004315013,  
0004430505, 0004417199,  
0004419431, 0004422320,  
0004422329, 0004507921,  
0004153701, 0004526264,  
0004636537, 0004604962

For Commission Consent to the Assignment of Various )  
Authorizations in the Wireless Radio Services )

To: Marlene H. Dortch, Secretary  
Attn.: Chief Administrative Law Judge Richard L. Sippel

**DUQUESNE LIGHT COMPANY'S RESPONSES TO**  
**ENFORCEMENT BUREAU'S FIRST SET OF REQUESTS FOR**  
**THE PRODUCTION OF DOCUMENTS**

Duquesne Light Company ("Duquesne") responds to the Enforcement Bureau's First Set of Requests for the Production of Documents Directed to Duquesne and subject to the following objections:

(a) Duquesne hereby reserves any objections it may have to the admission in evidence of the information provided herein on the grounds of materiality, relevancy or other proper grounds for objection.

(b) The information provided herein is not based solely on the knowledge of Duquesne, but includes knowledge of Duquesne's agents, representatives and attorneys, unless privileged.

(c) The word usage and sentence structure of the responses may be that of the attorney assisting Duquesne and thus does not necessarily purport to be the precise language of Duquesne.

(d) Duquesne hereby reserves all objections to the extent the requests exceed those permissible under the rules or seek inquiry not permissible under the rules.

### **DOCUMENTS REQUESTED**

1. All agreements, contracts or understandings entered into between you and Maritime for the lease of Site-based Authorizations licensed to Maritime.

**RESPONSE:** See attached Asset Purchase Agreement between Duquesne Light Company and Maritime Communications/Land Mobile, LLC dated February 18, 2010 (the "Maritime Agreement").

2. Documents sufficient to identify by call sign and location each Site-based Authorization you lease or have leased from Maritime.

**RESPONSE:** See Exhibit A to the Maritime Agreement.

3. Documents sufficient to demonstrate the date on which the facility at each location of each Site-based authorization you lease(d) from Maritime was constructed.

**RESPONSE:** See attached "Buildout Documentation" file.

4. Documents sufficient to demonstrate the date on which the facility at each location of each Site-based Authorization you lease(d) from Maritime was placed in operation.

**RESPONSE:** See attached Buildout Documentation file.

5. Documents sufficient to show the coverage area provided by the facility at each location of each Site-based Authorization you lease(d) from Maritime.

**RESPONSE:** See attached "Coverage Area Map" file.

6. Documents sufficient to identify all payments you have made to Maritime pursuant to any agreement produced in response to Request Number 1.

**RESPONSE:** Please see in the file "Communications with MCLM" confirmation of \$125,000 wire to Maritime received on February 19, 2010 in full payment of the purchase price set forth in the Maritime Agreement. DLC made no other payments to Maritime.

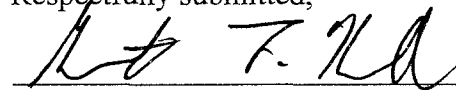
7. Documents sufficient to identify payments you have made to Maritime for AMTS service offered by you.

**RESPONSE:** None; DLC does not offer AMTS service.

8. All documents evidencing each Communication between you (or any Representative of yours) and Maritime referring or relating to your lease with Maritime or Maritime's Site-based Authorizations.

**RESPONSE:** Please see attached "Communications with MCLM" file.

Respectfully submitted,



Charles A. Zdebski

Eric J. Schwalb

Gerit F. Hull

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*Counsel to Duquesne Light Company*

### **CERTIFICATE OF SERVICE**

I, Charles A. Zdebski, certify that on this 27<sup>th</sup> day of August, 2012, I caused a true and correct copy of the foregoing Duquesne Light Company's Responses to Enforcement Bureau's First Set of Requests for Production of Documents to be served via electronic mail and first-class mail, postage prepaid, upon all of the parties below, with paper copies of the document production provided via hand-delivery only to the Enforcement Bureau<sup>1</sup>:

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*Counsel for Interstate Power and Light Company and  
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---

<sup>1</sup> Any party may request copies of the document production provided by Duquesne to the Enforcement Bureau by contacting undersigned counsel and agreeing to pay the costs of production of same.

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Transportation & Monitoring Wireless, Verde Systems  
LLC, Telesaurus Holdings, V2G LLC and Warren Havens*

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Midstream, LP, Enbridge Energy Company, Inc., EnCana  
Oil & Gas (USA) Inc. and Jackson County Rural Electric  
Membership Cooperative*

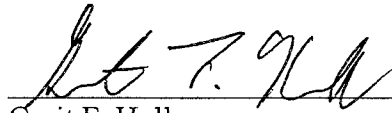
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Warren C. Havens  
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The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Office of the Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
*(Via facsimile and email)*

Michele Ellison  
Chief, Enforcement Bureau  
Pamela S. Kane, Deputy Chief  
Brian J. Carter, Attorney  
Investigations and Hearings Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 4-C330  
Washington, DC 20554  
*(also with documents by hand-delivery)*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, DC 20554  
*(Via Hand Delivery)*

  
Gerit F. Hull

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To: Marlene H. Dortch, Secretary  
Attn.: Chief Administrative Law Judge Richard L. Sippel

**DUQUESNE LIGHT COMPANY'S ANSWERS TO**  
**ENFORCEMENT BUREAU'S FIRST SET OF INTERROGATORIES**

Duquesne Light Company ("Duquesne"), by counsel, serves the following answers and responses to Enforcement Bureau's First Set of Interrogatories directed to Duquesne.

### **General Objections**

(a) Duquesne hereby reserves any objections it may have to the admission in evidence of the information provided herein on the grounds of materiality, relevancy or other proper grounds for objection.

(b) The information to be provided is not based solely on the knowledge of Duquesne, but includes knowledge of its agents, representatives and attorneys, unless privileged.

(c) The word usage and sentence structure of the discovery responses may be that of the attorney assisting Duquesne and thus does not necessarily purport to be the precise language of Duquesne.

(d) Duquesne generally objects to the extent the interrogatory is unduly burdensome and broad, immaterial, irrelevant, not limited in scope and not reasonably calculated to lead to the discovery of admissible evidence.

(e) Duquesne generally objects to the interrogatories to the extent they seek attorney-work product, privileged communication and/or information and documents prepared in anticipation of litigation.

(f) Duquesne generally objects to the extent the interrogatories define terms and seek information which is not permissible under the Federal Communications Commission Rules.

### **INTERROGATORIES**

1. Identify, by call sign and location, each Site-based Authorization that you lease or have leased from Maritime.

**ANSWER:** Duquesne leases portions of WHG750 from Maritime. Duquesne constructed the following sites, which are also referenced in the “Buildout Documentation” file produced in response to Request for Production of Documents, Request Nos. 2 and 3, pursuant to that authority:

- a) Dravosburg Tower- 217.0250 MHz 40-22-30N, 79-53-23W
- b) Hopewell Tower – 219.2125 MHz 40-36-16N, 80-14-38W
- c) Mt. Washington Tower -217.1500 MHz 40-25-34N, 80-00-13W
- d) North Tower – 217.2759 MHz 40-32-32N, 79-59-21W



- e) Plum Tower – 217.0875 MHz 40-28-18N, 79-43-25W
- f) Wilmerding Tower – 217.2125 MHz 40-24-06N, 79-48-49W
- g) Shippingport Tower – 219.2759 MHz 40-37-01N, 80-26-22W
- h) Valley Tower – 219.1500 MHz 40-42-59N, 80-17-40W
- i) Clinton Tower – 219.0250 MHz 40-30-29N, 80-18-18W
- j) Raccoon Tower – 217.0875 MHz 40-38-25N, 80-19-59W

2. Describe the coverage area provided by any facility that was constructed at each location for each call sign you identified in response to Interrogatory No. 1, above.

**ANSWER:** All the towers listed in response to Interrogatory 1 are located in Beaver and Allegheny Counties, Pennsylvania. See also the “Coverage Map” produced by Duquesne in response to Request for Production of Documents, Request No. 5.

3. State whether there is currently a facility constructed at each location for each call sign you identified in response to Interrogatory No. 1, above.

**ANSWER:** Duquesne has constructed the sites as listed above in response to Interrogatory No. 1. See also Duquesne’s Answer to Interrogatory No. 9.

4. State whether a facility is currently operating (i.e., on-the-air, transmitting a signal) at each location you identified in your response to Interrogatory No. 1, above. If not, explain why not.

**ANSWER:** Duquesne is currently operating all sites. All of the towers set forth in response to Interrogatory No. 1 are operating in the 217-219 MHz band, except for the Mt. Washington, Clinton and Valley sites, that recently received a change in equipment to operate at

900 MHz pursuant to other authority and as further described in response to Interrogatory No. 9, below.

5. For each location you identified in your response to Interrogatory No. 1, above, state the date on which construction of a facility at that location was completed.

**ANSWER:**

Dravosburg Tower- 5/13/2010

Hopewell Tower – 6/22/2010

Mt. Washington Tower -5/25/2010

North Tower – 5/14/2010

Plum Tower – 5/10/2010

Wilmerding Tower – 5/18/2010

Shippingport Tower – 7/30/2010

Valley Tower – 5/03/2010

Clinton Tower – 5/28/2010

Raccoon Tower – 6/15/2010

6. For each location you identified in your response to Interrogatory No. 1, above, state the date on which a facility at that location was placed in operation.

**ANSWER:**

Dravosburg Tower- 5/13/2010

Hopewell Tower – 6/22/2010

Mt. Washington Tower -5/25/2010

North Tower – 5/14/2010

Plum Tower – 5/10/2010

Wilmerding Tower – 5/18/2010

Shippingport Tower – 7/30/2010

Valley Tower – 5/03/2010

Clinton Tower – 5/28/2010

Raccoon Tower – 6/15/2010

7. State whether a facility was operating (*i.e.*, on-the-air, transmitting a signal) at each location you identified in your response to Interrogatory No. 1, above, at the time you leased it from Maritime. If not, explain why not.

**ANSWER:** Duquesne objects to this interrogatory because it is vague, confusing, overbroad, seeks information not within Duquesne's knowledge and is premised on speculation (that a facility already existed, or needed to exist, at a location). Once Duquesne was the authorized lessee of spectrum from MCLM, it constructed the facilities (as listed above in response to Interrogatory No. 1) and operated them as of the dates set forth in response to Interrogatory No. 6. The identified locations are properties owned or leased by Duquesne, not Maritime.

8. State whether a facility was constructed at each location you identified in your response to Interrogatory No. 1, above, at the time you leased it from Maritime. If not, explain why not.

**ANSWER:** Duquesne objects to this interrogatory because it is vague, confusing, overbroad, seeks information not within Duquesne's knowledge and is premised on speculation (that a facility already existed, or needed to exist, at a location). Once Duquesne was the authorized lessee of spectrum from MCLM, it constructed the facilities (as listed above in response to Interrogatory No. 1) as of the dates set forth in response to Interrogatory No. 5. The identified locations are properties owned or leased by Duquesne, not Maritime.

9. State whether operations at each facility constructed at each location you identified in your response to Interrogatory No. 1, above, have ever ceased. If so, explain why and describe how long any such facility at any such location was not or has not been operating.

**ANSWER:** No operations have ceased. Duquesne avers, however, that because it required greater certainty of long-term operations at its Clinton, Valley and Mt. Washington locations in light of this on-going proceeding, it recently replaced its 217-219 MHz antennas with 900 MHz antennas (pursuant to other operating authority) at those sites, as of the dates set forth below:

- a. Clinton Tower – 2/01/2012
- b. Valley Tower – 2/15/2012
- c. Mt. Washington Tower – 2/22/2012.

10. With respect to each Site-based Authorization you identified in response to Interrogatory No. 1, above, identify each location at which a facility was not constructed in accordance with the requirements of the relevant License, including geographic coordinates, antenna heights, and other technical parameters included on the License.

**ANSWER:** None.

11. With respect to any location you identified in response to Interrogatory No. 10, above, describe how the facility differs from the requirements of the relevant License, including geographic coordinates, antenna heights, and other technical parameters included on the License.

**ANSWER:** All Site-based Authorizations were constructed as required. Duquesne also avers that its Plum Tower site is located in close proximity to the Allegheny County border and that, due to interference issues, Duquesne used a special antenna to reduce signal attenuation into surrounding counties.

12. Describe each Communication between you (or any Representative of yours) and Maritime referring or relating to Maritime's Site-based Authorizations, including, but not limited to, the date any such Communication(s) occurred, the names and affiliation of each individual who participated in or received any such Communication(s), and the subject matter of such Communication.

**ANSWER:** Please see "Communications with MCLM" file, organized by date, and produced in Response to Request for Production Requests Nos. 6 and 8.

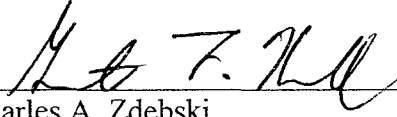
13. Describe each meeting which both you (or any Representative of yours) and Maritime attended referring or relating to Maritime's Site-based Authorizations, including but not limited to, the date any such meeting(s) took place, the names and affiliation of each individual who attended the meeting, and the subject matter discussed.

**ANSWER:** Duquesne representatives never met with Maritime representatives in person. Although telephone conferences between the companies occurred, Duquesne is unable to recollect the dates, attendees or topics of such calls. Most communications occurred via email and those communications have been provided in the "Communications with MCLM" file.

14. In the event you are unable to respond to any Interrogatory above, please explain why you are unable to respond.

**ANSWER:** None.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. A. Zdebski', is written over a horizontal line.

Charles A. Zdebski

Eric J. Schwalb

Gerit F. Hull

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*Counsel to Duquesne Light Company*

**VERIFICATION**

I, **Lee Pillar**, state that I sign the foregoing responses to Enforcement Bureau's Interrogatories on behalf of Duquesne Light Company, and that I am duly authorized to do so. I verify under penalty of perjury under the laws of the United States of America that the foregoing answers are true and correct, except as to those matters as to which I lack personal knowledge, and as to those matters I state that, based on the information available to me, they are true and correct to the best of my information available to me, they are true and correct to the best of my information, belief and knowledge.

A handwritten signature in black ink, appearing to read 'L. Pillar', written over a horizontal line.

**Lee Pillar**  
**Senior Communications Engineer**

**CERTIFICATE OF SERVICE**

I, Charles A. Zdebski, certify that on this 27<sup>th</sup> day of August, 2012, I caused a true and correct copy of the foregoing Duquesne Light Company's Answers to Enforcement Bureau's First Set of Interrogatories were served via electronic mail and first-class mail, postage prepaid, upon:

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*Counsel for Puget Sound Energy, Inc.*

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Transportation & Monitoring Wireless, Verde Systems  
LLC, Telesaurus Holdings, V2G LLC and Warren Havens*

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*Counsel for Atlas Pipeline Mid-Continent, LLC, DCP  
Midstream, LP, Enbridge Energy Company, Inc., EnCana  
Oil & Gas (USA) Inc. and Jackson County Rural Electric  
Membership Cooperative*

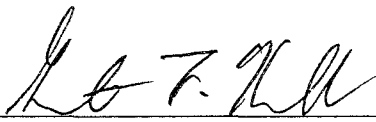
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The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Office of the Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
*(Via facsimile and email)*

Michele Ellison  
Chief, Enforcement Bureau  
Pamela S. Kane, Deputy Chief  
Brian J. Carter, Attorney  
Investigations and Hearings Division  
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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, DC 20554  
*(Via Hand Delivery)*

  
\_\_\_\_\_  
Gerit F. Hull

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Asset Purchase Agreement

between

Duquesne Light Company  
and  
Maritime Communications/Land Mobile

Dated February 18, 2010

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made as of the 18<sup>th</sup> day of February, 2010 ("Effective Date"), by and between **Maritime Communications/Land Mobile, LLC** (hereinafter referred to as the "Seller") a Delaware limited liability company with an office at 218 North Lee Street, Suite 318, Alexandria, VA 22314, on the one hand, and **Duquesne Light Company**, 411 Seventh Avenue, Pittsburgh, Pennsylvania 15219 (hereinafter referred to as the "Buyer"). Buyer and Seller are hereinafter the "Parties" and individually each "Party".

WHEREAS, Buyer seeks to purchase from Seller five channel pairs of 50 kHz each of the Federal Communications Commission ("FCC") licenses owned by Seller within the Territory (as hereinafter defined) on the Effective Date of this Agreement; and

WHEREAS, the Parties are entering into this Agreement to document the terms and conditions under which Seller shall sell and Buyer shall purchase said FCC licenses.

NOW THEREFORE, based on the recitals provided above and other good and valuable consideration, the receipt and adequacy of which is confirmed by both Seller and Buyer intending to be legally bound, Seller and Buyer agree as follows:

### **Article I – Definitions**

- a) The term "**Communications Act**" means the Communications Act of 1934, as amended.
- b) The term "**FCC Order**" means an action by the FCC granting the license for the six channels in the name of Buyer.
- c) The term "**FCC Rules**" means the rules, regulations, and policies promulgated by the FCC under the Communications Act that are currently in effect.
- d) The term "**Licenses**" shall mean five (5) paired channels of 50.00 kHz each of Automated Maritime Telecommunications Service ("AMTS") spectrum issued to Seller by the FCC in the "B Block" of the 217-218 MHz and 219-220 MHz band within the Territory. Attached as **Exhibit A** hereto is a list of those frequencies and sites indicating where the 5 channel pairs may be utilized. Seller may, with Buyer's consent, substitute specific AMTS channel designations prior to closing in order to optimize use of the spectrum in Western Pennsylvania.
- e) The term "**Territory**" means those ten (10) locations within Allegheny and Beaver Counties, in Pennsylvania, covered by the Licenses, at the sites shown in **Exhibit A** attached hereto. Buyer's 38 dBu service contour will not exceed the county boundaries.

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## **Article II – Purchase and Sale of Licenses.**

- a) Purchase Price. Buyer agrees to pay to Seller One Hundred and Twenty Five Thousand Dollars (\$125,000.00) (the “Purchase Price”) for the Licenses. Buyer agrees to pay Seller the balance of the Purchase Price on or before February 28, 2010.
- b) Seller agrees to take the Licenses off the market and exclusively reserve the Licenses for the Buyer for a period of time necessary to receive all consents, waivers and/or approvals from the FCC that are deemed necessary or appropriate by the Buyer for the transactions contemplated by this Agreement (hereinafter the “Exclusivity Period”). The Exclusivity Period shall expire upon the earlier of (i) the Closing Date (as hereinafter defined) or (ii) the termination of this Agreement. In the interim period between today and the Closing Date or termination of this Agreement, Buyer agrees to lease the channels from Seller for an additional fee of One Dollar (\$1.00) per year.
- c) Closing. The closing (herein called the “Closing”) of the transaction contemplated herein shall occur 10 business days after the date on which the FCC issues an order granting the Licenses to Buyer (hereinafter the “Closing Date”).
- d) Deliveries at Closing.
  - i) At Closing, Seller will deliver to the Buyer:
    - A) a copy of the order issued by the FCC that grants the Licenses to the Buyer;
    - B) an assignment from the Seller to the Buyer that acknowledges payment of the Purchase Price and that assigns all of the Seller’s right, title and interest in and to the Licenses; and
    - C) such other instruments and documents as the Buyer may reasonably request.
  - ii) At Closing, Buyer will deliver to Seller such instruments of assumption as the Seller may reasonably request.
- e) Conditions Precedent to Closing Obligations.
  - i) Conditions Precedent to the Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to each of the following conditions being met:

- A) FCC Approval. The FCC shall have issued an order granting the Licenses to the Buyer.
- B) Representations True and Correct. Each and every representation of Seller under this Agreement shall be true and accurate in all material respects as of the date when made and, for the purposes of serving as a condition to close, shall be true and accurate in all material respects at and as of the Closing Date as if it had been made again at and as of the Closing.
- C) Compliance with Covenants and Agreements. Seller shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Buyer) each and every covenant and agreement required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.
- D) Litigation. No suit, action or other proceedings shall, on Closing Date, be pending or threatened before any court or governmental agency seeking to restrain, prohibit, or obtain material damages or other material relief in connection with the consummation of the transactions contemplated by this Agreement.

If any such condition on the obligations of Buyer under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or before the Closing Date, or in the event the FCC does not issue an order granting the Licenses to the Buyer, and (in any case) Buyer is not in material breach of its obligations hereunder, this Agreement may, at the option of Buyer, be terminated. In the event such a termination by Buyer occurs the parties shall have no further obligations to one another hereunder (other than the obligations under Articles V and X hereof all of which will survive such termination). If Buyer proceeds to Closing with knowledge of any condition precedent above not being met by Seller, such condition precedent will be deemed waived by Buyer as a condition to close and Buyer hereby waives any claim for breach of a covenant, representation or warranty or for indemnity related thereto.

- ii) Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to each of the following conditions being met:

- A) FCC Approval. The FCC shall have issued an order granting the Licenses to the Buyer.
- B) Compliance with Covenants and Agreements. Buyer shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Seller) each and every covenant and agreement required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

- C) Litigation. No suit, action or other proceedings shall, on Closing Date, be pending or threatened before any court or governmental agency seeking to restrain, prohibit, or obtain material damages or other material relief in connection with the consummation of the transactions contemplated by this Agreement.

If any such condition on the obligations of Seller under this Agreement is not met as of the Closing Date, or in the event the Closing does not occur on or before the Closing Date, or in the event the FCC does not issue an order granting the Licenses to the Buyer, and (in any case) Seller is not in material breach of its obligations hereunder, this Agreement may, at the option of Seller, be terminated. In the event such a termination by Buyer occurs the parties shall have no further obligations to one another hereunder (other than the obligations under Articles V and X hereof all of which will survive such termination).

- f) Cooperation. Within fifteen (15) days of the Effective Date of this Agreement, Seller must submit assignment application(s) to the FCC that seek permission from the FCC to assign the Licenses to Buyer from Seller. Buyer and Seller agree to cooperate in the Seller's preparation of, and the Seller's filing of, these FCC assignment application(s). The first draft of each such filing shall be prepared by Dennis C. Brown, counsel to Seller, and all such costs for the preparation of each such filing shall be borne by the Seller. Buyer shall be responsible for the cost of Buyer's counsel in reviewing and commenting on each such filing. Seller and Buyer shall diligently prosecute all such applications, request such extensions to consummate the transaction and take all such actions and give all such notice as may be required or requested by the FCC or any other regulatory agency or as may be appropriate in an effort to expedite the grant of such FCC or such regulatory agency consents, approvals and waivers.

### **Article III – Representations and Warranties**

Seller represents, covenants and warrants that:

- a) Seller is the exclusive owner of the Licenses.
- b) The Licenses are free and clear of any liens or encumbrances.
- c) The Licenses have not been leased by the Seller and will be clear for use by Buyer on the Closing Date.
- d) From the Effective Date until the Closing Date, unless this Agreement is terminated earlier in accordance with its provisions, Seller shall not:
  - i) sell, transfer, pledge, assign, mortgage, encumber or otherwise dispose of all or any portion of the Licenses;

- ii) engage in any transactions or take any action or omit to take any action which will or could adversely affect its rights or interest in, or the validity of, the Licenses;
  - iii) sell, lease, license, cause to arise any lien or otherwise dispose of the Licenses; and
  - iv) take any action that would make any representation or warranty of Seller under this Agreement materially inaccurate at, or as of any time prior to the Closing Date, or omit to take any action necessary to prevent any such representation or warranty from being materially inaccurate at any such time.
- e) From the Effective Date until the Closing Date, unless this Agreement is terminated earlier in accordance with its provisions, Seller shall:
  - i) notify Buyer of any breach or inaccuracy of any representation or warranty of Seller made by Seller as of the Execution Date; and
  - ii) comply with all applicable laws concerning the Licenses and this Agreement, including FCC Rules and the Communications Act.
- f) Seller shall:
  - i) maintain all of its rights and interest in, and the validity of, the License in compliance with the Communications Act and the FCC Rules;
  - ii) conduct its operations in accordance with the conditions established by the FCC for maintaining the Licenses; and
  - iii) promptly provide Buyer with copies of all applications and other correspondence to the FCC and any notices, authorizations, orders or correspondence received from the FCC that directly pertain to the Licenses.
- g) Seller has the requisite power, authority and legal right to execute, deliver and perform this Agreement; this Agreement has been duly executed and delivered on behalf of Seller; and this Agreement constitutes the legal, valid and binding respective obligations of Seller, enforceable in accordance with their respective terms.
- h) the Licenses are valid and Seller is in compliance with all statutes, rules, regulations and policies of the FCC concerning construction and operation of the Licenses and the facilities associated therewith, and the Licenses are fully constructed and operational as required by FCC Rules.

#### **Article IV – Non-Disclosure**

Seller and Buyer agree that this Agreement, including the exhibits, is confidential information. Notwithstanding any provision to the contrary, the Parties agree that:



- a) each Party shall be entitled to disclose this Agreement to such Party's officers, directors, employees, legal counsel, accountants and corporate affiliates in order to understand, evaluate, administer, implement and/or enforce this Agreement provided each such permitted recipient of a copy of this Agreement understands that this Agreement is confidential; and
- b) each Party shall be entitled to publicly disclose this Agreement to the extent such disclosure is necessary in any legal, judicial, administrative or dispute resolution proceeding in which a Party seeks the enforcement of, and/or an interpretation of, this Agreement.

#### **Article V – Indemnification**

- a) Seller shall indemnify, defend, and hold harmless Buyer, its directors, officers, employees, attorneys, agents and affiliates from and against all claims and actions and all expenses incidental to such claims or actions, including, without limitation, attorneys' fees and expenses, based upon or arising out of:
  - i) acts and/or omissions of Seller or anyone acting under Seller's direction or control or on Seller's behalf during the term of this Agreement; and/or
  - ii) any default or breach of any provision, representation, covenant and/or warranty of Seller under this Agreement.
- b) Buyer shall indemnify, defend, and hold harmless Seller from and against all claims and actions and all expenses incidental to such claims or actions, including, without limitation, attorneys' fees and expenses, based upon or arising out of:
  - i) acts and/or omissions of Buyer or anyone acting under Buyer's direction or control or on Buyer's behalf during the term of this Agreement; and/or
  - ii) any default or breach of any provision, representation, covenant and/or warranty of Buyer under this Agreement.

#### **Article VII – Governing Laws/Disputes**

- a) This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without reference to its choice of law rules. The parties hereby irrevocably submit to the personal jurisdiction of any state or federal court sitting in the Commonwealth of Pennsylvania over any suit, action or proceeding arising out of or relating to this Agreement.
- b) Any dispute, controversy or claim arising out of or under this Agreement or its performance shall first be negotiated by the parties. Any disagreement or dispute between the parties shall, if not promptly resolved by mutual agreement, be reduced to writing and submitted to executive officers of each party designated by such party to